

OGC Has Reviewed

5 May 1955

MEMORANDUM FOR: Transportation Division/Logistics Office

SUBJECT : Change in Justice Department Policy of
Defending Employees in Civil Suits Arising
Out of Injury in Line of Duty

REFERENCE : (a) Department of Justice Circular 41-22,
dated 11 May 1950

(b) Comptroller General Decision B-122887, → (34 C.G. 440)
dated 31 March 1955

1. As probably you know, the Department of Justice memorandum to all United States attorneys announced that department's policy of providing the services of United States attorneys as defense counsel in suits brought against Government employees by outsiders on account of acts of alleged negligence on the parts of the Government employees while acting in line of duty. This policy apparently was occasioned by those instances in which the outsiders would sue the employees concerned rather than the United States under the Federal Tort Claims Act (60 Stat. 842, 28 U.S.C. 1291 (1946)).

2. The cited Comptroller General's Decision dealt with an instance in which a Government employee, while driving a Government vehicle in line of duty, injured another Government employee. The latter brought suit against the driver in his private capacity. The case was settled out of court for \$600.00. The driver subsequently progressed a claim for the amount of the settlement, plus \$200.00 attorneys' fees, under the Meritorious Claims Act (45 Stat. 413, 31 U.S.C. 236 (1928)). In passing on the claim, which was denied, the Comptroller General pointed out that the reason why the claimant had had to hire a private attorney instead of having his suit defended by a United States attorney was that the Justice Department refused assistance. The reason given for the refusal was that:

"... where plaintiff, as well as the defendant, is a Federal employee acting within the scope of his employment a representation of the defendant by the United States would be in derogation of such rights as the plaintiff might have under local law, although no overriding interest of the United States is at issue."

It is noteworthy that the claim was denied on the ground of its not being of the type within the contemplation of the Meritorious Claims Act.

3. We bring this to your attention for the reason that, against this background, it would seem advisable that drivers of this Agency carry insurance to guard against the contingencies of their having to pay out of their own pockets for damages inflicted on other employees while driving in the line of duty.

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Office of General Counsel

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Distribution

Subject

Signer

Chrono